

**Thomas Industries, Inc. and Oil, Chemical and Atomic Workers International Union, AFL-CIO. Case 10-CA-15205**

April 6, 1981

**DECISION AND ORDER**

On August 22, 1980, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge, except as modified below, and to adopt his recommended Order, as modified below.

We agree with the Administrative Law Judge that the Respondent violated Section 8(a)(1) of the Act by reprimanding an employee for bringing "too many petty grievances" on behalf of the Union. We also agree, for the reasons set forth *infra*, that the Respondent further violated Section 8(a)(1) of the Act by conducting an employee poll, and also violated Section 8(a)(5) of the Act by withdrawing recognition from the incumbent Union. We do not agree, however, with the Administrative Law Judge that the Respondent violated Section 8(a)(1) of the Act by refusing to process employee Moody's "grievance" or by its "best interest" statement in its captive-audience speech.

Employee Peggy Moody told Superintendent Fred Reed that she wanted to initiate a grievance against a fellow employee who, Moody alleged, had tried to provoke a fight with her on company grounds. Reed told Moody that he already had discussed the matter with the president of the Union, and that he had ascertained that the "grievance" was a personal matter in which Reed did not intend to get involved.<sup>2</sup> Moody returned to Reed's office on the following day and informed him that she was going to file a grievance against him for refusing to accept her grievance the day before. Reed responded by accusing Moody of harassing him and the Company and, according to various testimonial versions, also said that, if she mentioned anything more about it, he either would do something about her, or would take legal or disciplinary action against her. The Administrative Law Judge

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> Reed testified, and it is undisputed, that he and the union president had agreed that it was a personal matter with which neither wanted anything to do.

found it unnecessary to resolve the testimonial differences because he found that any version constituted a coercive statement. However the General Counsel failed to show, and the Administrative Law Judge made no express finding, that the activity about which Moody complained was a protected activity under Section 7 of the Act, and we find that it was not. The mere fact that the alleged incident occurred on company property does not, by itself, link it sufficiently with conditions of employment to make it a matter of mutual aid and protection within the purview of Section 7 of the Act. It follows, therefore, that neither Reed's rejection of Moody's personal "grievance" nor his admonition constituted unlawful conduct and, accordingly, we shall dismiss this allegation of the complaint.

We also disagree with the Administrative Law Judge's finding that the Respondent violated Section 8(a)(1) of the Act by stating to its employees, during a captive-audience speech delivered immediately before polling its employees regarding their desire for continued union representation, that "We do not want the Oil, Chemical and Atomic Workers Union here and we think it would be in your best interest if there is no union here." As the Administrative Law Judge recognized, absent any accompanying promises or threats, the Board normally treats such comments as statements of opinion protected under Section 8(c) of the Act. *S. S. Kresge Company*, 197 NLRB 1011, 1012 (1972). The Administrative Law Judge found *Kresge* distinguishable on the ground that, here, the statement occurred in the context of other unfair labor practices and just before a poll of its employees. While it is true that the Respondent committed other unfair labor practices, the only unlawful conduct in which the Respondent had engaged as of the time the statement was made was the unlawful reprimand given approximately 2 months earlier for filing too many petty grievances. We find that the nexus between this single incident and the statement is too tenuous to establish an unfair labor practice climate sufficient to convert an otherwise protected statement of opinion into a coercive promise or threat. Nor can the timing of the statement *vis-a-vis* the poll change its nature. Certainly, it was intended to persuade, and the proximity to a vote might have made it more persuasive, but that does not make it coercive within the meaning of Section 8(a)(1) of the Act. Accordingly, we hereby dismiss this allegation of the complaint.

As to the poll itself, the record shows that in 1977 the Union was certified as the exclusive collective-bargaining representative of a unit of the Respondent's employees, and entered into a collective-bargaining agreement with the Respondent

which remained in effect until January 11, 1980. Between the latter part of 1978 and October 1979, approximately 42 of the 124 unit employees disparaged the Union to 4 different supervisors. Based on these conversations, and on their "knowledge of the people" in their departments, the supervisors reported to the Respondent that a majority of the employees did not want the Union. Meanwhile, the percentage of employees having their union dues checked off declined from 63 percent in January 1979 to 36 percent in June and 31 percent in October, and approximately 24 members, including some officers, committeemen, and stewards, resigned from the Union. The Respondent contends that these conditions caused it to doubt that a majority of its employees wished to retain the Union as their bargaining representative, and, therefore, it conducted the poll to determine the employees' desire and, as its president and general manager testified, to avoid "the possibility of negotiating with a minority group, which is against the law."

It is well established that, as a prerequisite to polling employees regarding their desire for continued representation by a certified union, an employer must have an objective basis for doubting the union's majority status. *Mid-Continent Refrigerated Service Company*, 228 NLRB 917 (1977); *Jackson Sportswear Corporation*, 211 NLRB 891 (1974). This is the same test used for determining the lawfulness of an employer's withdrawal of recognition from an incumbent union after the expiration of the certification year. *Montgomery Ward & Co., Incorporated*, 210 NLRB 717 (1974). The Respondent's showing here does not meet this test.

Of the 42 employees who expressed dissatisfaction with the Union, many indicated a clear rejection of the Union as their bargaining representative. But, as the Administrative Law Judge has set forth in more detail, the remarks of a number of these 42 employees fell short of clear rejection and the remarks of at least 10 of them can be characterized at best as criticism of the Union's performance and/or expressions of disenchantment with the Union and a disinclination to be members or to pay dues. See *Retired Persons Pharmacy, t/a MRTA-AARP Pharmacy*, 210 NLRB 443, 446 (1974), enfd. 519 F.2d 486 (2d Cir. 1975), and cases cited therein.<sup>3</sup> Rejection and/or criticism of the bargaining representative by a minority of the unit employees is insufficient to support a reasonable doubt of the Union's continued majority status. *Retired Persons Pharmacy, supra*; *Grand Lodge of Ohio, Independent Order of Odd Fellows d/b/a Odd Fellows Rebekah Home*,

233 NLRB 143 (1977).<sup>4</sup> Moreover, the supervisors' subjective estimates that a majority of the employees did not want a union add little, if anything, to the probative force of the employees' statements, which constituted the only concrete evidence on which the supervisors' estimates were based. As for the resignations of membership and the cancellations of dues checkoff, it is well established that a union need not have majority support in terms of membership or dues checkoff in order to enjoy the presumption of continued majority status. See, e.g., *Petroleum Contractors, Inc.*, 250 NLRB 604 (1980).<sup>5</sup>

Thus, none of the factors on which the Respondent relies provides an objective basis on which the Respondent could predicate a reasonable doubt of the Union's continued majority status. Nor do these factors have a cumulative effect which impels a different conclusion. The statements attributed to approximately one-quarter of the employees remain the only objective evidence of the employee's desire to be without representation from the Union. Moreover, the Respondent had no reason to believe that any significant number of those complaining employees had ever been in favor of union representation.<sup>6</sup> Indeed, the evidence presented here puts into question only the employees' support for the Union as an institution, above and beyond their acquiescence in its status as bargaining representative. Moreover, there is a considerable overlap between those who expressed dissatisfaction and those who actually resigned from the Union. Only 10 employees in addition to the first group, plus Gene Street, a supervisor, resigned. Significantly, only 12 of the 42 employees who expressed dissatisfaction to supervisors took even the limited step of resigning their memberships. The drop in dues checkoffs adds nothing because the Respondent has not shown that the checkoffs were canceled by any employees other than those who either (1) expressed their dissatisfaction with the Union to supervisors or (2) resigned.<sup>7</sup> In these circumstances, we cannot find that the Respondent entertained a reasonably based doubt of the Union's majority

<sup>4</sup> Equally unpersuasive is the fact that some of the employees volunteered their opinion that a majority of the employees no longer wanted the Union to represent them. *Roza Watch Corp.*, 249 NLRB 284 (1980).

<sup>5</sup> We note that, with the Respondent's knowledge, a majority of the employees had ceased having their dues checked off several months before the Respondent decided to conduct its poll.

<sup>6</sup> The Union's 1977 certification resulted from an election which it won by a vote of 52 to 50. The closeness of that vote, occurring nearly 3 years before the events in question here, does not, of course, permit the Respondent to entertain a reasonable doubt merely by virtue of one or two individual employees having changed their minds. It is noted, in this connection, that the presumption of the Union's majority status comes not only from its certification, but also from its subsequent success in obtaining a collective-bargaining agreement.

<sup>7</sup> We do not mean to suggest that, had the Respondent made such a showing, the result here necessarily would be different.

<sup>3</sup> The remarks of employees Arnold Laws, James Anderson, Moore, None, Bennett, Miller, Baker, James Laws, Jarnigan, and Thomas fall into these general categories.

status when it conducted the poll. Its conduct of the poll, therefore, was unlawful. *Jackson Sportswear Corporation, supra*.<sup>8</sup>

Subsequent to the poll, which resulted in 48 votes for and 64 against the Union, the Respondent refused the Union's request to bargain, claiming it then doubted the Union's majority status. That claim, we have found, is without justification, as is the Respondent's reliance on the results of its unlawful poll. *Montgomery Ward & Co., Inc., supra*. Further, by conducting the poll immediately after delivering a captive-audience speech urging the employees to vote against the Union, the Respondent created an atmosphere which, even in the case of a Board-conducted election, would not be conducive to a free exercise of employee choice. *Peerless Plywood Company*, 107 NLRB 427 (1953). This further rendered the results of the poll unreliable. Therefore, we affirm the Administrative Law Judge's finding that the Respondent violated Section 8(a)(5) of the Act when it refused to bargain.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Thomas Industries, Inc., Johnson City, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 1(b) and 1(d) and reletter the subsequent paragraphs accordingly.
2. Insert the following as new paragraph 1(c):  
“(c) Coercively polling its employees concerning their union sympathies.”
3. Substitute the attached notice for that of the Administrative Law Judge.

<sup>8</sup> We find it unnecessary to pass on the Administrative Law Judge's alternative finding that the Respondent failed to comply with one of the polling standards set forth in *Struksnes Construction Co., Inc.*, 165 NLRB 1062 (1967).

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the exclusive representative of the following appropriate bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at our Johnson City, Tennessee, facility, including all warehousemen, shipping and receiving clerks, and janitors, but excluding all office clerical employees, salesmen, professional employees, temporary employees, guards and supervisors as defined in the Act.

WE WILL NOT coercively poll our employees concerning their union sympathies.

WE WILL NOT verbally reprimand our employees because they file grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively with the aforesaid Union as the exclusive representative of all the employees in the appropriate unit described above with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

THOMAS INDUSTRIES, INC.

### DECISION

WILLIAM N. CATES, Administrative Law Judge: This matter was heard before me at Johnson City, Tennessee, on June 14 and 15, 1980. The charge was filed by Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called the Union or Charging Party, on November 9, 1979. The complaint, issued on January 2, 1980, alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Charging Party which had been certified by the Board as the bargaining representative of its employees. In its answer Respondent denied the essential allegations in the complaint. After close of hearing, briefs were filed on behalf of the General Counsel and the Respondent.

Based on the entire record<sup>1</sup> in this proceeding, including direct personal observation of the witnesses and their demeanor while testifying, and after due consideration of the post-hearing briefs, I make the following:

<sup>1</sup> Certain errors in the transcript are hereby noted and corrected.

## FINDINGS OF FACT

## I. JURISDICTION

Respondent is a Delaware corporation with a place of business located in Johnson City, Tennessee, where it is engaged in manufacturing of paint brushes and rollers. During the calendar year preceding the issuance of the complaint, Respondent sold and shipped finished products valued in excess of \$50,000 from its Johnson City, Tennessee, facility directly to customers located outside the State of Tennessee.

The complaint alleges, the answer admits, and I find that Oil, Chemical and Atomic Workers International Union, AFL-CIO, is now and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background

On May 18, 1977, following a secret-ballot election which was conducted on February 10, 1977, the Union was certified by the National Labor Relations Board (hereinafter called Board) as the exclusive collective-bargaining representative of the following unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its Johnson City, Tennessee facility including all warehousemen, shipping and receiving clerks and janitors, excluding all office clerical employees, salesmen, professional employees, temporary employees, guards and supervisors as defined in the Act.

On July 11, 1977, Respondent and the Union entered into a collective-bargaining agreement covering employees in the above-described unit, said agreement being effective from July 11, 1977, until January 11, 1980, inclusive and thereafter from year to year unless written notice within a specified time was submitted by either party to the other of its desire to amend or terminate the agreement.

On October 19, 1979, Respondent conducted a poll of its employees requesting that the employees indicate if they wished to be represented for purposes of collective bargaining by the Union. The basis for the poll, the actual conduct of the poll, and the circumstances surrounding it will be discussed *infra*.

On November 5, 1979, Joe Carr, president of Local 3-951 of the Union, gave written notice to Respondent of the Union's desire to open the contract for negotiation and requested a meeting date for such negotiations to commence.

On November 7, 1979, Respondent, by its Plant Manager Gene Holt, responded to the Union in writing indicating that Respondent viewed the Union as a minority union which did not represent the wishes of a majority of the unit employees, and that Respondent did not intend to renegotiate the terms and conditions of the collective-bargaining agreement which would expire on Jan-

uary 11, 1980. However, Respondent continued to honor the existing contract until its expiration.

Respondent's alleged unlawful conduct in violation of Section 8(a)(1) of the Act and its refusal to bargain are discussed *infra*.

## B. Threat of Reprisal

The General Counsel's complaint at paragraph 7 alleges that Respondent, by its Roller Department Superintendent Fred W. Reed, on or about October 4, 1979, threatened its employees with reprisals because they attempted to file grievances. As Respondent acknowledges in its brief, the essential facts with regard to this incident are for the most part not in dispute. Employee Peggy Moody testified that on October 3, 1979, she along with Union Shop Steward Lola Fox went to Superintendent Reed's office at approximately 6:55 a.m. Moody testified she stated to Reed the purpose of her visit was that she wanted to take step one on a grievance of Carrie Greer. According to Moody, Reed replied, "It [the grievance] was personal and that he wouldn't accept it, that he had already spoken to Joe Carr . . . President of Local." Moody inquired if that was Reed's answer and when Reed indicated it was, Moody and Fox left Reed's office.

The following day Moody returned to Reed's office, this time with Union President Carr. Moody informed Reed she was going to take step one on a grievance on him for not accepting the grievance she had attempted to file the day before. According to Moody, Reed became angry, accused her of harassing him and the Company, told her that he had already talked the grievance over with Carr, and that if she mentioned anything else about it again he would do something about her. Moody then mentioned something to Reed about going to the Labor Board. The grievance Moody was attempting to file with Reed involved a fellow employee's conduct toward Moody. Union President Carr testified to essentially the same facts as Moody except he recalled Reed saying to Moody that he did not want to hear the grievance and if she came back any more, he would take her to the office and take disciplinary action that he was tired of the harassment. Superintendent Reed testified on direct examination in essentially the same manner. Reed stated with regard to the October 4, 1979, meeting with Moody: "I told Peggy [Moody] that it [the grievance] was a personal matter and I didn't want to get involved in it, and I was getting tired of her harassing me and the management team of this plant . . . I told her I would take legal action on her if she didn't stop it, and they left at that point." I find all three versions of the incident to be essentially the same and my findings would not differ if either of the versions was considered alone.

Respondent, in brief, contends the incident should be considered isolated, innocuous, and insufficient to base a finding of a violation of Section 8(a)(1) of the Act upon and cites *Square D Company*, 204 NLRB 154 (1973), in support thereof. In *Square D*, a shift supervisor told a union steward that certain grievances amounted to "nit-picking" and that the steward should file no more grievances on the subject. The Board reversed an administrative law judge's finding of a violation by stating that

there was a single meeting between the steward and the supervisor where the remark was made and that numerous grievances were being filed and processed thereafter and that it would not on this single isolated incident find a violation, and further if it were a technical violation it would not be sufficient to justify either the finding of an unfair labor practice or the issuance of a remedial order. The instant case, however, arises in quite different circumstances. The Respondent herein on or about August 28, 1979, gave a verbal warning to an employee for filing a grievance and, as will be set forth *infra*, commencing on November 9, 1979, refused to bargain with the Union as the exclusive representative of its employees. I therefore conclude that the incident was neither isolated nor innocuous but, rather, a threat of reprisal against an employee who attempted to file a grievance, and such conduct constitutes a violation of Section 8(a)(1) of the Act.

#### C. Verbal Reprimand

The General Counsel's complaint at paragraph 8 alleges that Respondent by its Plant Manager Gene Holt, on or about August 28, 1979, verbally reprimanded an employee because the employee filed grievances. Employee Della Dugger testified she had been the Union's vice president for approximately a year and in that capacity had attended meetings with the Respondent to discuss employee grievances. Dugger credibly testified that she was in attendance at one such meeting<sup>2</sup> where employee grievances were being discussed with the subject matter ranging from an employee working a higher job but not being paid at the higher rate to an employee not being able to get along with fellow employees. At this same meeting Respondent and the Union discussed ordering trash cans for the women's restrooms, and whether Dugger's supervisor, Gene Street, had been harassing Dugger or vice versa. Dugger testified that, during the discussion of these matters, Plant Manager Holt stated to her that he was giving her a verbal warning and when Dugger inquired of Holt why, he replied, "that I had been having too many petty grievances." Union President Carr essentially corroborated Dugger's testimony in that he recalled Holt telling Dugger at the meeting that she was getting a verbal warning for harassing management. Plant Manager Holt testified regarding the August 1979 grievance meeting that Dugger, on consecutive days, had filed two grievances that month which he considered were of a petty nature. Holt testified that he told Dugger the grievances were petty. One of the grievances, according to Holt, involved a claim that Supervisor Gene Street and David Potter were doing maintenance work in the warehouse. Holt claimed that Dugger had not followed proper procedure with regard to the grievance and that the outcome of the grievance was that it was voided. Holt testified the second grievance involved equalization of overtime with Dugger claiming overtime was not equalized. Holt testified Respondent's position was that equalizing overtime

<sup>2</sup> Dugger placed the date in September. All other witnesses, including Respondent's witness, placed the date of the meeting as late August: I view this as insignificant in that each remembered essentially the same facts being discussed. I credit Dugger's testimony with regard to the substance of the meeting as being the most accurate.

had been a standard procedure in Respondent's plant and as a result the grievance was dropped at the grievance meeting in August. Holt denied giving Dugger a verbal warning. Holt testified that the Company had a policy of making a file note of verbal warnings and that Dugger's file contained no such warning note. As earlier indicated, when in conflict with other testimony, I credit Dugger's version of the events of the August grievance meeting as the more accurate. I therefore find that Holt did in fact state to Dugger that he was giving her a verbal warning because she had filed the grievances in question. I discredit Holt's denial regarding the warning. I find unpersuasive the fact that the personnel file of Dugger did not reveal a warning note. Holt, by his own testimony, considered grievances petty that dealt with subject matters that I find are items generally discussed in collective-bargaining relationships. Based on all of the record facts regarding the incident and my observation of the witnesses, I find Holt gave a verbal warning to employee Dugger as alleged in the complaint and that such conduct constitutes a violation of Section 8(a)(1) of the Act.

#### D. The Alleged Unlawful Promises

The General Counsel's complaint, at paragraph g, alleges that Respondent, by its president and general manager, P'Pool, on October 19, 1979, promised its employees, in violation of Section 8(a)(1) of the Act, economic and other benefits if they rejected the Union as their collective-bargaining representative. The General Counsel did not specify at the hearing or in brief what the "other benefits" were; however, counsel for the General Counsel stated at the hearing the sole evidence in support of the paragraph g allegations were contained in Joint Exhibit 1. Joint Exhibit 1 was the text of a speech given by P'Pool on October 19, 1979, to the assembled unit employees of Respondent just prior to Respondent's conduct of a poll by Attorney James Epps. The speech which P'Pool read is as follows:

We have called this meeting today of all production and maintenance employees in order to get your decision as to whether or not you want the Company to continue to deal with the Oil, Chemical and Atomic Workers Union on all matters pertaining to your job.

Many of our employees during this past year have asked why the Company still gives recognition to the Union since so few of the production and maintenance employees have indicated any interest in the Union and only approximately 30% of the employees are on checkoff. Let me make this point very clear. The only reason that the Company has recognized the Union is because the law has required us to do so. We do not want the Oil, Chemical and Atomic workers Union here and we think it would be in your best interest if there is no union here. [Emphasis supplied.] On the other hand, the Company does not want to do anything that would be a violation of the law. You as an individual have the right to vote for the Union if you desire to do so, and the Company respects your rights.

Up until now we have had no choice but to deal with the Union since the law requires us to do so. However, the contract is now about to terminate on January 11, 1980 and you as an individual have the right to decide for yourself now whether or not you want the Company to continue to recognize the Union. That is our purpose in being here today—to determine whether the Union continues to represent a majority of our employees. If the Union fails to poll a majority of the votes cast the Company will no longer recognize the Oil, Chemical and Atomic Workers Union as your bargaining representative at the expiration of this contract. Of course, should the Union receive a majority of the votes cast the Company must by law continue to recognize them as your bargaining agent.

In order to make sure that everyone's rights are protected we are going to let each of you vote a secret ballot. I have asked Mr. James Epps, Attorney, Johnson City, to come here today to handle the election and to count the ballots in your presence. There will be no supervisors or representatives of management present when you vote on this important matter. We ask that you stay in this room and vote one at a time in the first aid room. As soon as you have voted and placed your ballot in the box, you may clock out and go home or stay and see the results. You will be paid for a full days work, and your paychecks will be passed out to you at the time clock. We ask that the second shift wait until last to vote and then return to your work stations. I intend to leave now and will turn this meeting over to Mr. James Epps unless any of you have any questions that you want to ask before I leave.

Joint Exhibit I was fully litigated with no dispute that the speech was read as quoted above. The General Counsel alleges the speech contains implied promises of benefit to reject the union. Respondent, in its brief, contends the Board has held the comment "We think it would be in your best interest if there is no Union here" to be a statement of opinion within the ambit of the Respondent's right to free speech under the Constitution and Section 8(c) of the Act. Respondent contends the speech in no way violates Section 8(a)(1) of the Act, and in support thereof cites *S. S. Kresge Company*, 197 NLRB 1011 (1972). Respondent further contends the Board has found such statements to be insufficient grounds upon which to base an objection to the results of a Board election, citing *Worzalla Publishing Company*, 171 NLRB 219, 220 (1968). The comments in *Kresge, supra*, arose in the context of an organizational campaign in which the union, if desired, had time to respond to the comments of the employer therein, whereas in the case at bar the comments were made just moments before Respondent conducted a poll of its employees' union sympathies. In these circumstances, I conclude that the polling atmosphere was such that employees were precluded from exercising a free choice. In *Worzalla* the alleged offensive speeches were made in the context of an organizational campaign approximately a month on one occasion and a day on the second occasion before the election which at

least provided time for a response. It is concluded that the comment in P'Pool's speech "we do not want the Oil, Chemical and Atomic Workers Union here and we think it would be in your best interest if there is no union here," taken in the context in which it arose along with the other unfair labor practices found herein and considering the timing of the comment which was just moments before the Respondent conducted a poll of its employees' union sympathies constitute interference in the form of promises which were intended to and did undermine employee support of the Union and, therefore, restrained or coerced unit employees in violation of Section 8(a)(1) of the Act.

#### E. The Polling Issue

The record establishes and it is undisputed that the Respondent caused a poll of its employees' union sentiment to be conducted on October 19, 1979. The law is clear that an employer must have an objective basis for doubting an incumbent union's continued majority status before conducting a poll of employee sentiment. Respondent's President and General Manager Gerald P'Pool testified he came to the Johnson City, Tennessee, location of Respondent on July 4, 1978, and within a couple of months of his arrival he began hearing "some grumbling about the Union situation." P'Pool<sup>3</sup> testified that certain individual employees made comments directly to him about their union sentiment by stating: "Why do we need a Union here," "they don't represent a majority," "we feel like they are a hinderance," and "we feel like they're troublemakers." P'Pool attributed these remarks to employees Arnold Laws, Vestal Anderson, Ralph Trinett, Kay Morley, and Paul Street. However, upon cross-examination, P'Pool became more specific as to what he could recall the employees had stated to him regarding their union sympathies. P'Pool testified that employee Laws was a janitor and had told him on several occasions that he (Laws) "thinks the Union shouldn't be in there." P'Pool was unable to state if these were Law's exact words. P'Pool testified that employee Anderson stated to him, "why do we have them here, they don't represent the majority and so forth and so on"; however, again P'Pool was not sure of the exact words of Anderson. P'Pool testified that Ralph Trinett's comments were "probably expressed a little stronger perhaps—in stronger language." P'Pool testified that employee Morley commented to him, "Why are they in here. We don't need them—things of that nature." P'Pool states that employee Street told him "probably . . . to the effect that we didn't need the Union in there, that they were causing problems." P'Pool testified that he also received word from Plant Manager Gene Holt and other supervisors who had heard remarks from employees regarding their union sentiments.

<sup>3</sup> The testimony of P'Pool, Holt, Reed, and Taylor pertaining to comments made to them by unit employees regarding their union sentiments was uncontradicted except for the one comment attributed to employee Bob Holly by Superintendent Taylor. I credit P'Pool, Holt, Reed, and Taylor in this aspect of their testimony. Employee Holly's denial of the comment attributed to him I find to be more in the nature of not remembering the incident instead of an outright denial.

Plant Manager Holt<sup>3</sup> testified that between the dates of January 1, 1979, and October 19, 1979, he had heard comments from unit employees regarding their feelings toward representation by the Union. Holt testified that Ralph Trinette stated to him, "The Union costs money, comments such as why should the minority rule the majority." Holt further testified that Kay Morley spoke to him about the Union saying, "that it cost him money, the Union had, that they were troublemakers, always keeping people upset." Holt states that employee Sheila Carr told him she did not believe in unions. Holt testified that Jack Yarber indicated to him he did not want to work in a union plant, that "they were nothing but troublemakers." Holt testified that Arnold Laws told him "all unions do is take your money, and they don't do anything for the people, always causing a lot of trouble." Holt stated that employee Bill Trinette said unions had never done anything for him and he did not want to be represented. Holt testified that Karen Crowe had stated she would quit before she would join a union, and Betty Reed had said that "they were nothing but troublemakers: they were all starting false rumors."

Roller Department Superintendent Fred Reed<sup>3</sup> testified that prior to October 19, 1979, various employees made comments to him regarding their feelings toward union representation. Reed testified that Helen Anderson had mentioned to him "she wished she had never fooled with the Union, and that she was confused. They kept her tore up all the time. She would like to get out of it." Reed testified that Otis Holsclaw stated to him "they [Union] kept him tore up all the time, and he didn't like working under one." Reed also testified that William Prinette commented to him that "he wanted to get out of the goddam Union." Reed testified that Edward Woodby had said "they could take the Union and stick it up their ass." Reed further testified that Brenda Johnson told him she could use her money better than the Union could, and that she did not want to be working for a union. Reed testified Peggy Davis told him she stayed confused all the time, that they had her tore up all the time under the Union, that she was sorry that she ever messed with it, and she wanted to do something about it. Reed states James Anderson told him "the Union just caused trouble between the people and kept them stirred up all the time." Reed testified employee Robert Garland told him he was pressured into the Union and that if he had to work under a union, he would quit. Reed also testified that Karen Crowe said "[I]f she had to join the Union, she would quit first—wouldn't work under that condition." Edna Woodby told Reed the Union caused confusion with the people all the time and that her personal feelings were that she felt they did not even need a union. Reed testified that Oscar Moore said "he could use his \$8.00 per month better than the Union could," and that the Union had not done anything for him. Reed, after reviewing his notes, testified that Keith Peters told him, "that as soon as his time was up on the Union he was going to resign." Reed testified that employee Frank Tester had asked him several times why the minority of the people tried to rule the majority. Reed testified that Robert McKinney commented to him "that the Union kept the people tore up and he wanted something done

about it, if he could do anything at all about getting out of it." Ted Lowe told Reed he felt they did not need a union and that the Union just caused trouble. Reed testified that Roger Miller stated to him "that the Union just caused trouble between the people, and an argument and uproar all the time . . . that we should do something about it." Reed stated, based on his knowledge of the people who worked for him and the comments made to him, that a majority of the approximately 64 employees of the roller department and warehouse under his supervision did not wish to have continued representation by the Union.

Brush Department Superintendent Terry Taylor testified there were approximately 62 employees under his supervision in the brush department and that various employees made comments to him, namely: Kenneth None stated to him "the union didn't do him any good . . . the union just caused trouble"; Ralph Trinette stated to him "that the union wasn't doing him any good. It was costing him money . . . and . . . he didn't have no need for one"; Earl Bennett stated to him "that he felt like the Union cost him money, and they just caused trouble between people"; Hope Banner stated to him "the Union caused trouble between the people, and she didn't have any need for one"; Bob Holly stated to him the Union did not do him any good and wanted to know what he could do about getting the Union out; Roger Miller stated to him "the Union wasn't doing him any good, and he was getting out of it because he could do something better with his money"; Jo Ann Crain said to him "the Union wasn't doing her no good . . . it caused trouble . . . it looked like there would be some way that we could get the Union out"; Roger Barker told him "it just cost him money and that he had better things he could do with his money." Taylor further testified Regina Anderson stated to him that she did not have any need for a union because she felt like she could speak for herself. Taylor testified Phyllis Corley had asked him why should she belong to a union when she could talk for herself and would not have to pay anyone else to do it for her; and, Sheila Carr had said to him that she did not need a union, it always caused trouble between people. Taylor testified James Laws told him all the Union was good for was just to cause trouble. According to Taylor, Keith Peters told him he was fed up with the Union and didn't want anything else to do with it; and, Betty Reed had told him she did not want to be represented by the Union. Taylor testified Albert Jarnagin told him "he had been paying the Union for nothing, and he was getting out because he was paying them for nothing. They wasn't helping him a bit"; and, Donna Webb had told him she did not need a union because she could talk for herself. Carolyn Broyles told Taylor she had no need for a union, that she could speak for herself and because they caused trouble between people. Taylor further testified Jeff Thomas told him "the Union wasn't doing him any good"; and Kay Morley had stated to him "the union didn't do him any good like it was just costing him money, and he had also talked to different people that he brought to my attention that he did not, you know, want the Union." Taylor stated Paul Street told him he did

not want anything to do with the Union because they stirred up trouble and he had talked with different ones in his department that did not want anything to do with the Union. Taylor also testified William Tester told him "he felt like the plant would be better off without a Union"; and Helen Wright told him she did not have any need for a Union as she could speak for herself. And Jannie Reese told Taylor, according to Taylor's testimony, she had no need for a union because it just caused trouble. Taylor testified he passed this information along to Plant Manager Holt. Taylor also testified there were approximately 62 employees under his supervision and it was his opinion that two-thirds of the brush department did not want a union.

I find that certain of the unit employees made statements to more than one supervisor. Those employees who made statements to more than one supervisor were: Ralph Trinette, Arnold Laws, Kay Morley, Paul Street, Sheila Carr, William Prinette, Karen Crowe, Betty Reed, Keith Peters, and Roger Miller. There were a total of 52 unit employee comments testified about by Respondent's supervisors; namely, 5 by P'Pool, 8 by Holt, 16 by Reed, and 23 by Taylor. Of the 52 total comments there were 10 duplications, thus reducing the total number of individual employees stating an expression of union sentiment to the Respondent to 42. I find that the comments attributed to employees Arnold Laws, Betty Reed, Helen Anderson, Peggy Davis, James Anderson, Oscar Moore, Kenneth None, Earl Bennett, Roger Miller, Roger Baker, James Laws, Albert Jarnagin, and Jeff Thomas did not convey a clear rejection of representation by the Union but rather constituted nothing more than disavowal of financial support for the Union, or criticism of the Union which cannot be equated with repudiation of it. There were 124 unit employees on the list used for the poll conducted on October 19, 1979. I find the statements offered by Respondent to support its objective basis for doubting the union majority status prior to its conducting its poll on October 19, 1979, were insufficient for such a basis. I do so based on the substance of certain of the statements as set forth above together with the insufficient number of statements attributed to unit employees.

Respondent would also rely on a decline in the number of individuals on dues checkoff to support its good-faith doubt of continued majority status by the Union. Respondent's Exhibit 1 sets forth the percentage of employees on dues checkoff in which it is indicated that 63 percent of the employees were on checkoff in January 1979, with a decline to 31 percent in October 1979. The exhibit indicates Respondent had known since June 1979 that less than a majority of the employees participated in dues checkoff. The Board has held that a desire to no longer contribute to the financial support of a union is not the same as indicating a desire to no longer be represented by the Union. *Dalewood Rehabilitation Hospital, Inc. d/b/a Golden State Habilitation Convalescent Center*, 224 NLRB 1618 (1976). Therefore I conclude Respondent could not have validly placed reliance on the decline in the participation by unit employees in dues checkoff such as to form the objective consideration to conduct its poll of October 19, 1979.

Respondent would also rely on the resignation of certain union officials in support of its objective considerations. Plant Manager Holt testified, and his testimony was uncontradicted, that Bill Prinette and Roger Miller resigned from the negotiating committee and union stewards Otis Holsclaw, Peggy Davis, and Vestal Anderson resigned from the Union. Holt also testified Linda South, a union vice president, quit her employment at Respondent and stated her reason to Holt that she was being harassed by the Union. I am unpersuaded that these resignations detracted from the Union's representative status, since there is no showing on this record that the Union has not continued to function with various union officials. In fact the current union president and vice president testified at the hearing. I therefore conclude that Respondent could not have validly relied on the resignations of union officials as an objective basis for doubting the Union's continued majority status such as to legitimize its October 19, 1979, poll. Respondent would also rely on employee resignations from the union as set forth in Joint Exhibit 8; however, I conclude that resignations from the Union do not equate to a desire to no longer be represented by the Union and as such could not have constituted the basis for a doubt of continued majority status sufficient to warrant Respondent conducting its poll of October 19, 1979.

Accordingly, Respondent did not have expressions of antiunion sentiment from a sufficient number of employees to support a reasonable doubt that a majority of the employees desired to be represented by the Union before it conducted a poll of employee sentiment. I find all the objective considerations raised by Respondent; i.e., employee sentiment, dues checkoff, union officials resigning, and member resignations in the context of this case do not constitute a reasonable doubt of continued majority status by the Union sufficient to permit Respondent to lawfully conduct a poll of its employees' union sentiment. Thus, I find Respondent violated Section 8(a)(1) of the Act by the conduct of its poll and further find Respondent may not use the unlawful poll as a basis for withdrawing recognition from the Union. *Mid-Continent Refrigerated Service Company*, 228 NLRB 917 (1977).

Assuming *arguendo*, that Respondent did have an objective basis for the conduct of a poll of its employees' union sentiments on October 19, 1979, it failed to meet the *Struksnes Construction Co., Inc.*, 165 NLRB 1062 (1967), criteria for conduct of such a poll. Respondent assembled all of its production and maintenance employees in the plant cafeteria on October 19, 1979. Respondent's president and general manager, P'Pool, addressed the assembled employees (the entire text of P'Pool's speech is set forth elsewhere in this decision) in which P'Pool stated, among other things, "[It] is our purpose in being here today to determine whether the Union continues to represent a majority of our employees." Following his speech P'Pool introduced to the assembled employees Mr. James Epps, a private practitioner and city attorney for the municipality of Johnson City, Tennessee. Epps impressed me as a very articulate and honest witness and I fully credit his account of the conduct of the poll. Epps credibly testified that he read the following

speech without deviation except that he introduced himself as Jim Epps instead of James Epps:

As Mr. P'Pool stated to you, I am Mr. James Epps and my only purpose in being here today is to conduct this election in order that each of you can express your own feelings on this Union matter by secret ballot. I am not an employee of this company and I will not be affected one way or the other as to how you vote. My only concern is to make sure that each of you have an opportunity to vote and that your vote will be kept secret.

I have here a ballot for each of you, and I would like for you to step forward one at a time, state your name to me, take your ballot in the voting booth, mark an "X" in your choice, and then return and place it in the ballot box. You will need to stand in line until the person in front of you come out of the room before you go in to mark your ballot. Do not sign the ballot or put any other mark on the ballot that would indicate who you are. The ballot is very simple. If you want the Company to continue to deal with the Union, then mark your ballot "YES." If you do not want the Company to deal with the Union, then mark your ballot "NO." After you have finished voting, I will then count the ballots in your presence and give you the results. Are there any questions concerning the election?

Before you go vote, the Company has asked me to emphasize certain points to each of you:

1. The only purpose in our having this election is to determine whether or not you want this Union as your representative.
2. The Company has asked me to tell each of you that no action will be taken against anyone as a result of how you vote. This is your election and you have the legal right to vote however you please.
3. This will be a secret ballot election. No one will ever know how you vote unless you voluntarily tell them.

Do you have any questions before we begin the election?

Mr. Paul Street, a member of the bargaining unit, will sit with me as an observer.

Epps testified that upon completion of his reading of the above speech Local Union President Carr came to the front of the room and stated he had some remarks to make to the assembled employees. Carr objected to the proceedings by stating he thought they were illegal. Epps told Carr his comments were noted. Carr remained in the polling area throughout the entire poll.

The poll was taken in the Respondent's cafeteria where Epps checked off each voter on a list of unit employees as the voter was identified by unit employee Paul Street. Each voter was then given a ballot which the employee took for marking into a first-aid room

which joined the cafeteria at the southeast corner of the cafeteria a few feet from where Epps was seated at a table checking off voters. Epps testified that some voters fully closed the door to the first-aid room while voting, others partly closed the door, while still others left the door open. Well inside the first-aid room was a pulpit-type stand at which place the voter could actually mark the ballot. Epps had a ballot box for the voter to place the ballot in after marking it. Epps permitted only one voter to have a ballot in the first-aid room at any given time and did not permit the next voter into the area until the previous individual returned his ballot to the ballot box. I do not credit that portion of Union President Carr's testimony that unit employee Bob Holly paced up and down in the voting area during the time employees were voting. Holly testified that he voted in the polling area and departed. Later, he returned to the doorway to ask if he or anyone else would be permitted to attend the vote count and then departed a second time returning only after the voting had been completed. Holly impressed me as an unbiased witness with no apparent reason not to be telling the truth. I therefore credit Holly's testimony that after he voted he left the polling area.

Carr testified that he remained present in the polling area for the entire time of the poll. He testified he remained "sort of in the lunchroom entrance and the first-aid entrance," and that he observed approximately 5 to 10 voters mark their ballots in a manner that he could see how they voted. I do not credit Carr's testimony that he observed voters marking their ballots. The voters proceeded inside the first-aid room to a pulpit-type lectern where they marked their ballots and the direction of the pulpit would place a voter's back to anyone looking into the area even if the door to the room remained open. Carr did not stand in the door but rather 3 to 5 feet from the entrance to the room and the pulpit was well inside the 12 foot by 10-foot room. Carr was also mistaken as to whether Holly remained in the voting area. Additionally, Carr testified that Epps read from a prepared statement that Paul Street was representing the OCAW. A reading of Epps' remarks indicates that Street was present as a unit employee. I find Carr's account of the polling to be unreliable and discredit his testimony that he observed 5 to 10 voters marking their ballots.

There were 124 employees on the eligibility list used by Epps. The ballot used for the poll stated:

Do you wish to be represented for the purpose of collective bargaining by the Oil, Chemical and Atomic Workers Union?

Mark an "X" in the square of your choice

NO

YES

Upon the completion of the poll, Epps and Street tallied the vote on a tally sheet and certified the results which were: Total number of eligible voters 112; votes for the Oil, Chemical and Atomic Workers Union 48; votes against the Oil, Chemical and Atomic Workers Union 64; void ballots, none; total ballots cast 112. As

noted above, there were 124 names on the list with 112 actually voting. I find the actual eligible voters to be 124 instead of 112. I do so based on the list which contained 124 names, which list neither party objected to. The parties at the hearing stipulated that the marked ballots reflected the results indicated above. The ballots, eligibility list, tally, and certificate of results had been, until the day of the hearing, in a safety deposit vault in a local bank under the control of Epps.

The Board has adopted certain specific criteria and standards that must be observed in any polling of employees' union sympathies. In *Struksnes Construction Co., Inc.*, *supra*, the Board adopted the following standards:

Absent unusual circumstances, the polling of employees by an employer will be violative of Section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim to majority, (2) this purpose is communicated to the employees, (3) assurances against reprisals are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.

P'Pool's speech, as well as Epps' comments prior to the poll, indicate that the purpose of the poll (not to be confused with the basis for taking the poll) was to determine the validity of the majority status of the Union and the purpose was communicated to the employees. Epps stated: "The only purpose in our having this election is to determine whether or not you want this Union as your representative." P'Pool stated in pertinent part in his speech "our purpose [is] . . . to determine whether the Union continues to represent a majority of our employees." I conclude that Respondent met the first and second of the *Struksnes* requirements as outlined above. Epps conveyed the following assurance to the employees just prior to the poll: "The Company [Respondent] has asked me to tell each of you that no action will be taken against anyone as a result of how you vote, this is your election and you have the legal right to vote however you please." I conclude that assurances were given. However, this must be viewed in light of my finding that P'Pool conveyed to the unit employees what I have concluded to be a promise of benefit in his speech as set forth elsewhere in this Decision. I find that the balloting as earlier described was conducted in a manner such as to insure secrecy of the balloting by the employees. I find the poll was conducted in disregard of *Struksnes* requirement number five. As more fully set forth elsewhere in this decision, I have concluded that Respondent's president and general manager, P'Pool, promised Respondent's employees benefits to reject the Union in his speech to the assembled employees just prior to the poll being taken. In addition, as elsewhere discussed, Respondent threatened its employees with reprisals because they attempted to file grievances and verbally reprimanded an employee because the employee filed or attempted to file a grievance with Respondent. It is concluded that Respondent created a "coercive atmosphere" by its misconduct and as such I conclude Respondent's

poll of its employees' union sympathies on October 19, 1979, was in violation of Section 8(a)(1) of the Act, even if a valid basis for conducting the poll had been established.

#### F. The Refusal To Bargain

The complaint alleges and Respondent admits that on November 5, 1979, the Union requested, and on November 7, 1979, Respondent refused, to bargain with the Union as the exclusive representative of the employees in an appropriate unit. There was a current collective-bargaining agreement in effect at the time of Respondent's refusal to bargain. The contract had an expiration date by its terms of January 11, 1980. Respondent continued to honor the contract until its expiration. The parties stipulated that on May 18, 1977, the Board had certified the Union as the exclusive collective-bargaining representative of all the employees in the unit described elsewhere in this Decision. It is well established that a certified union, upon expiration of the first year following certification, enjoys a rebuttable presumption that its majority status continues. *Celanese Corporation of America*, 95 NLRB 644, 671-672 (1951). The existence of a prior contract raises a dual presumption of majority: first, that the union had a majority status when the contract was executed; and second, that the majority continued through the life of the contract. *Shamrock Dairy, Inc.*, *Shamrock Dairy of Phoenix, Inc.*, and *Shamrock Milk Transport Co.*, 119 NLRB 998, 1002 (1957), and 124 NLRB 494 (1959), *enfd.* 280 F.2d 665 (D.C. Cir.), *cert. denied* 364 U.S. 892 (1960). These presumptions may be overcome by evidence establishing the union no longer enjoys majority representative status. Also, an employer may refuse to bargain, without a showing of a loss of majority by the union, if it relies on a good-faith and reasonably grounded doubt of the union's continued majority status. *Terrell Machine Company*, 173 NLRB 1480-81 (1969), *enfd.* 427 F.2d 1088 (4th Cir. 1970). As to the second of these, namely, "good faith doubt," there are two requirements necessary in establishing such a defense which are the asserted doubt must be based on objective considerations and must be raised "in a context free of unfair labor practices. *Nu-Southern Dyeing & Finishing, Inc.*, 179 NLRB 573, *fn.* 1 (1969), *enfd.* in part 444 F.2d 11 (4th Cir. 1974).

Applying these principles to the instant case, it is clear when, on November 7, 1979, Respondent notified the Union that it would not participate in renegotiation of the current contract, which had approximately 2 months to run, the Union was entitled to a presumption of majority status. It was therefore Respondent's burden to show either a loss in fact of majority status by the Union or that Respondent had, on the basis of objective facts, a reasonable doubt of that status. For the reasons set forth elsewhere in this decision and further discussed here, I conclude that Respondent failed to rebut the presumption of the Union's continued majority representative status. Respondent did not have sufficient objective consideration to constitute a good-faith doubt of the continued majority representative status of the Union as set forth under the section E of this decision. However, as-

suming, *arguendo*, that Respondent had a basis for conducting the poll on October 19, 1979, of its employees' union sentiment, it may not rely on the results of that poll as it was not conducted in a context free of unfair labor practices. The unfair labor practices of Respondent; i.e., promise of benefits to reject the Union, threats of reprisals for attempting to file grievances, and a verbal reprimand for filing a grievance are of the nature that would tend to produce disaffections from the Union. It is well settled that an employer may not negate its obligation to bargain by relying on any loss of majority status attributable to its own unfair labor practices. *Franks Bros. Co. v. N.L.R.B.*, 321 U.S. 702, 704-705 (1944).

Respondent attempted to call some 65 to 70 additional employee witnesses at the hearing to conduct a poll of sorts of the employees' union sentiments by inquiring of the employee if, on October 18, 1979 (1 day prior to Respondent's poll), they wished continued representation by the Union and if that sentiment had changed in any way by November 9, 1979 (the day Respondent refused to bargain). I disallowed the calling of the witnesses by Respondent in that the after-the-fact subjective intent of the employees is irrelevant to establish the good-faith basis of the Respondent "objective considerations."

Accordingly, in view of the foregoing I find that the Respondent's assertion that its refusal to bargain was predicated on a good-faith and reasonably grounded doubt of the Union's majority status is not supported by the record. I therefore find that the Respondent was obligated to continue bargaining with the Union and, by refusing to do so and withdrawing recognition from the Union, it violated Section 8(a)(5) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices found are unfair labor practices affecting commerce and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(a)(1) of the Act by threatening its employees with reprisals because they attempted to file grievances; verbally reprimanding an employee because the employee filed grievances, promised its employees economic benefits to reject the Union, and by conducting a poll of its employees' union sentiments.
4. Respondent has violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from, and refusing to bargain in good faith with, the Union from and after November 7, 1979.

#### THE REMEDY

Having found that Respondent has violated the Act in certain respects, I shall recommend that Respondent be required to cease and desist therefrom. Affirmatively Re-

spondent will be required to continue to recognize and, upon request, bargain with the Union, and post an appropriate notice.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I issue the following recommended:

#### ORDER<sup>4</sup>

The Respondent, Thomas Industries, Inc., Johnson City, Tennessee, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

- (a) Refusing to bargain collectively with the Union as the exclusive representative of the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its Johnson City, Tennessee, facility, including all warehousemen, shipping and receiving clerks and janitors, but excluding all office clerical employees, salesmen, professional employees, temporary employees, guards, and supervisors as defined in the Act.

- (b) Promising employees benefits if they reject the Union as their collective-bargaining representative.

- (c) Verbally reprimanding our employees because they file grievances.

- (d) Threatening our employees with reprisals if they attempt to file grievances.

- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

##### 2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

- (a) Upon request, bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the exclusive collective-bargaining representative of its employees in the aforesaid unit, and if an agreement is reached, embody the same in a signed contract.

- (b) Post at its Johnson City, Tennessee, facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 10 of the Board, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Re-

<sup>4</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted by Order of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spendent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.